THE EASTERN CARIBBEAN SUPREME COURT

VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

COMMERCIAL DIVISION

Claim No BVIHC (COM) 2024/0454

BETWEEN:

LUC A. DESPINS (as Chapter 11 Trustee of the Estate of Ho Wan Kwok)
Claimant

and

K LEGACY LTD
QIANG GUO (also known as Mileson Guo)
Defendants

Mr James Morgan KC, instructed by Harney, Westwood and Riegels, and Ms Jhneil Stewart of that firm, for the Claimant

Mr Yash Bheeroo, instructed by Ogier, and with him, Mr Brian Lacy and Mr David Lim, both of Ogier, for the Defendants

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2026: 10 and 12 March

24 March

JUDGMENT

Introduction

[1] **THE HONOURABLE JUSTICE MITHANI KC (AG)**: In this Claim ("the Claim" or "this Claim"), the Claimant is Luc A Despins. He is the Chapter 11 trustee of the bankruptcy estate of Ho Wan Kwok ("the Debtor"), having been appointed in that capacity on 8 July 2022, by the United States Bankruptcy Court, District of Connecticut. I will refer to the Claimant in this judgment ("this Judgment" or "the Judgment") as either "the Claimant" or "the Trustee".

[2] The defendants in the Claim are K LEGACY LTD ("K Legacy" or "the First Defendant") and QIANG GUO (also known as Mileson Guo) ("Mr Guo" or "the Second Defendant"). The Second Defendant is the Debtor's son. I shall refer to the First and Second Defendants in this Judgment as "the Defendants", which expression, where the context requires, will include either or both of them.

[3] I will refer to the Claimant and the Defendants collectively as "the Parties".

[4] Several interlocutory applications brought by the Defendants fall for determination in advance of the trial of the Claim, presently listed for 14 days in October 2026. The principal application raises a jurisdictional issue under the rule of private international law commonly referred to as the "immovables rule" or the "Moçambique rule".

Background facts and circumstances

[5] The Debtor commenced bankruptcy proceedings in the United States Bankruptcy Court, District of Connecticut, on 15 February 2022. The Claimant was appointed the Debtor's trustee in bankruptcy by that Court. In that capacity, the Claimant is responsible for

investigating the Debtor's financial affairs and identifying and recovering assets belonging to the bankruptcy estate.

[6] The Claimant alleges that the Debtor controlled a complex network of corporate entities. Those entities were frequently used to hold assets indirectly for the benefit of the Debtor or those associated with him. The Claimant alleges that such arrangements were designed to conceal the beneficial ownership of those assets to avoid the Claimant being able to collect and recover those assets for the benefit of the creditors of the Debtor's bankruptcy estate.

[7] The Claim concerns one such alleged structure, which the Claimant asserts was established to conceal the Debtor's ownership of the asset in question.

[8] The assets in question are the shares held in the First Defendant, a company incorporated in the British Virgin Islands. Those shares ("the Shares") are registered in the name of the Second Defendant, but the Claimant alleges that they are held beneficially for the Debtor.

[9] The First Defendant holds legal title to two long-leasehold apartments at 5 Princes Gate, London ("the London Property"). The Claimant alleges that the Debtor provided the funds used to acquire the London Property. He asserts that the London Property was acquired through the First Defendant as part of a structure designed to put that asset out of the reach of the Debtor's creditors.

[10] The Claimant contends that the Debtor is, and remains, the beneficial owner of the Shares and that, therefore, the Shares have vested in him as the trustee in bankruptcy of the Debtor. He also contends that the London Property formed part of the Debtor's bankruptcy estate and that, essentially, the London Property is held by the First Defendant on trust, or as nominee of, the Debtor.

[11] The Defendants deny those allegations. They maintain that the Second Defendant is the beneficial owner of both the Shares and the London Property.

[12] The Defendants contend that the Claimant's case necessarily requires this Court to determine whether the Debtor held a beneficial interest in immovable property situated in England. The Defendants state that disputes concerning rights in foreign land fall within the exclusive jurisdiction of the courts of the place where the land is situated.

[13] The Claimant disputes that analysis. He maintains that the Claim is fundamentally concerned with the ownership of shares in a company incorporated in the British Virgin Islands. He submits that the issue concerning the London Property arises only incidentally to that dispute. The Claimant further relies upon the Court's statutory powers to grant assistance to foreign insolvency representatives under **Part XIX of the Insolvency Act 2003** ("the IA 2003").

[14] The present applications, therefore, require the Court to examine the interaction between traditional principles of private international law governing rights in foreign land and the statutory framework governing cross-border insolvency cooperation. Although the issue arises in the context of an interlocutory application, it raises questions of wider importance regarding the limits of this Court's jurisdiction. In particular, it requires consideration of the circumstances in which disputes involving corporate structures may nonetheless fall within the scope of the immovables rule.

<u>Procedural History</u>

[15] The Claim was commenced in the BVI as part of the Claimant's investigation into the Debtor's assets. The Claimant obtained interim injunctive relief preventing dealings with the Shares and the London Property. The purpose of those orders was to preserve the assets pending the determination of the Claim.

[16] A 14-day trial in October 2026 has been listed for the hearing of the Claim.

[17] On 10 March 2026, the Court heard paragraph 1 of an application dated 19 January 2026 ("the 19 January 2026 Application") in which the Defendants challenged the jurisdiction of

this Court to try the Claim. That part of the application has been referred to in the papers as the “Immovables Rule Application”.

[18] The other parts of the 19 January 2026 Application seek orders: (a) to strike out parts of the amended points of claim (“the Statement of Claim”) served by the Claimant (referred to in the papers as “Statement of Claim Application”) by which the Claimant seeks to rely at trial on “similar fact allegations” and the like; and (b) to strike out those parts of the trial witness statement of the Claimant dated 3 October 2025 which is said by the Defendants to be based on inadmissible hearsay and opinion evidence (referred to in the papers as “the Witness Statement Application”). Those applications were due for hearing on 12 March 2026, but have been rescheduled to 24 March 2026, subject to this Court's determination of the Immovables Rule Application.

[19] In October 2025, the Claimant applied for specific disclosure (referred to in the papers as the “Specific Disclosure Application”), which was originally scheduled for hearing on 5 February 2026. Subject to how the Court determines the Immovables Rule Application, that application will be heard on a date subsequent to 24 March 2026, but before the October 2026 trial.

[20] The principal part of the 19 January 2026 Application, which I heard on 10 March 2026, was the Immovables Rule Application. That application seeks the dismissal of the Claim on jurisdictional grounds. The Defendants contend that the Claim cannot be pursued in this jurisdiction because of the so-called “immovables rule”.

[21] Unless otherwise stated or the context otherwise requires, the references below to the application are to the Immovables Rule Application.

[22] Any underlined emphasis appearing in this Judgment is my own. All other emphasis – whether in bold, italics, or otherwise – reflects the original emphasis as it appears in the source materials reproduced from the Bundles and remains that of the respective authors or creators of those documents.

The Parties' respective positions on the Immovables Rule Application

The Claimant's position

[23] The Parties' respective positions are briefly summarised above. In essence, the Claimant contends that the Debtor was the beneficial owner of the Shares, which, therefore, formed part of his bankruptcy estate. He alleges that the First Defendant was incorporated or otherwise formed part of a structure deployed by the Debtor to conceal assets; that the Debtor provided the funds used to acquire the London Property; and that, together with his son (the Second Defendant), he established the mechanism by which the Shares were intended to be shielded from his creditors.

[24] As regards the jurisdictional issue that arises, the Claimant emphasises that the primary issue before the Court concerns the ownership of the Shares, i.e., the shares in K Legacy Limited, a BVI company. On that basis, the Claim is concerned solely to determine disputes concerning the ownership of shares in a company incorporated in this territory. While accepting that the London Property forms part of the factual background to the Claim, the Claimant argues that the Court is not being asked to determine title to the London Property; rather, the Court is being asked to determine whether the Shares (in the name of the Second Defendant) are held beneficially for the Debtor.

The Defendants' position

[25] The Defendants submit that the Claimant's case cannot succeed without determining whether the Debtor held a beneficial interest in the London Property. The Defendants argue that such a determination would necessarily involve adjudicating upon rights in English land.

[26] The Defendants rely on several cases to support their argument that this Court has no jurisdiction to determine the Claim. They include the leading case on the immovables rule, **British South Africa Co v Companhia de Moçambique** [1893] A.C. 602, and subsequent

authorities, most notably, **Hesperides Hotels Ltd v Aegean Turkish Holidays Ltd** [1979] A.C. 508; and **Kireeva v Bedzhamov** [2024] UKSC 39, [2025] A.C. 812.

[27] The immovables rule was stated in **Kireeva** in the following terms: [1]

> "It is an established principle in many national legal systems, including the common law of England and Wales, that questions as regards rights to and interests in land and other immovable property are governed by the law of the country in which the property is situated (the lex situs) and that jurisdiction to decide those questions belongs to the courts of that country. Where immovable property is situated in country A, neither the law nor the courts of country A will recognise or give effect to any laws or judicial decisions of other countries which purport to govern or decide issues of rights to and interests in that immovable property, save to the extent of any exceptions under the law of country A. In this judgment, we refer to this principle of private international law, as applied to immovable property in England and Wales, as the immovables rule."

[28] The immovables rule applies in the BVI in roughly the same way as it applies in England and Wales: see **Al-Thani and another v Al- Thani and others** [2024] UKPC 35, [2025] 1 BCLC 473. Specifically, the Privy Council in **Al-Thani** confirmed that **the Moçambique** rule applies in BVI law as a substantive rule, not merely as a procedural rule, i.e., essentially confirming that the immovables rule forms part of BVI law and operates as a jurisdictional bar to the adjudication by the BVI courts of interests in foreign land.

[29] The Defendants' position, in short, is that the Claimant cannot avoid the immovables rule by framing the claim as one concerning shares in a BVI company. The Defendants contend that the substance of the Claim concerns rights in English land. Accordingly, the immovables rule applies, and this Court has no jurisdiction to determine the Claim.

[30] It is clear that, if the Court concludes that the Claim solely or mainly determines the beneficial ownership of the Shares, the jurisdiction challenge must fail.

[31] To repeat the position of the Parties briefly, the Defendants' position is that the Claim necessarily requires this Court to determine whether the Debtor held a beneficial interest in

[1] [2024] UKSC 39, [2025] A.C. 812, at [1].

immovable property situated in England; that foreign insolvency law cannot confer on the Claimant a recognised proprietary or equitable interest in that Property; that the equity exception does not apply because the Claimant seeks first to establish, rather than enforce, the relevant interest; that **Part XIX** does not displace the rule; and that any BVI judgment purporting to determine rights in the London Property would not be recognised or enforced in England.

[32] The Claimant's position, as developed in Section E of his skeleton argument, is that the proceedings are principally about the Shares; that the issue concerning the London Property arises only incidentally; that the case falls within the *in personam* equitable exception; that **Part XIX** provides a sufficient route to relief; and that it would be inefficient and contrary to justice to split the issues between jurisdictions.

[33] I turn to those arguments.

<u>Issue for this Court to determine on the Immovables Rule Application</u>

[34] The principal issue raised by the Defendants' jurisdictional challenge is whether the relief sought in the Claim requires this Court to determine (whether directly or indirectly) the Debtor's beneficial interest in the London Property, an immovable property situated in England. If the determination of the Claim necessarily requires the Court to adjudicate upon proprietary rights in English land, the claim is caught by the immovables rule and falls within the exclusive jurisdiction of the courts of England and Wales.

[35] The issues arising on the applications may, therefore, be summarised as follows:

(a) whether the Claim requires the Court to determine rights in immovable property situated in England;

(b) if so, whether the immovables rule prevents this Court from adjudicating upon those rights;

(c) whether the claim falls within the equitable *in personam* exception recognised in **Penn v Lord Baltimore** (1750) 1 Ves Sen 444 or any other exception; and

(d) whether **Part XIX of the Insolvency Act 2003** alters the position.

[36] The Parties' arguments, including those advanced in Section E of the Claimant's skeleton argument, can conveniently be resolved under those four questions.

The Legal Framework

The Moçambique or immovables rule

[37] The immovables rule forms part of the common law of England and Wales and, for present purposes, of the law applicable in this jurisdiction. It is a rule of fundamental importance. At its core lies the proposition that rights to, and interests in, immovable property are governed by the law of the place where the property is situated and that questions concerning such rights and interests are to be determined by the courts of that place.

[38] The rule derives from the decision of the House of Lords in **British South Africa Co v Companhia de Moçambique** [1893] AC 602, which established that courts will not adjudicate upon title to foreign immovable property.

[39] The classical articulation of the rule is found in the **Moçambique** decision itself. There, the House of Lords made it clear that the English courts had no jurisdiction to entertain proceedings requiring them to adjudicate upon title to foreign land. Lord Herschell LC explained that such matters fall naturally and properly within the competence of the courts of the country where the land is situated. The reasons are rooted in principle and practice: they include territorial sovereignty, the close relationship between land and the legal order of the situs, the need to avoid conflicting adjudications, and the practical limitations on enforcing judgments affecting immovable property outside the forum.

[40] The rule reflects the principle that proprietary rights in land are governed by the *lex situs*. Lord Herschell LC observed in **Moçambique**:[2]

> " … It is quite true that in the exercise of the undoubted jurisdiction of the courts it may become necessary incidentally to investigate and determine the title to foreign lands, but it does not seem to me to follow that because such a question may incidentally arise and fall to be adjudicated upon the courts possess, or that it is expedient that they should exercise, jurisdiction to try an action founded on a disputed claim of title to foreign lands."

[41] The reasoning of Lord Herschell has often been cited in subsequent cases and in practitioner-works and remains foundational. He observed, in substance, that although a question concerning foreign land may sometimes arise incidentally in the exercise of an otherwise undoubted jurisdiction, it does not follow that the courts possess, or ought to exercise, jurisdiction to try an action founded on a disputed claim of title to foreign land. He also pointed to the obvious difficulties and potential injustice that would arise if the courts were to adjudicate on foreign land without being able effectively to enforce their judgments at the situs.

[42] The rule has repeatedly been reaffirmed. It is not an obsolete relic. It has been treated as a continuing and substantive rule of law. As already stated, it has been recognised under BVI law, including in **Al-Thani**. Indeed, there is no serious dispute before me that the rule forms part of the relevant private international law of this jurisdiction.

[43] The application of the immovables rule is encapsulated by the editors of Dicey and Morris in the following terms (omitting the footnotes in those paragraphs):

> "Rule 137(1): The court may assume jurisdiction, *inter alia*, if the subject matter of the claim relates wholly or principally to property within the jurisdiction, provided that this shall not render justiciable the title to or the right to possession of immovable property outside England and Wales".

[2] [1893] A.C. 602 at 624-626.

Rule 138(1): The court has no jurisdiction to entertain proceedings for the determination of the title to, or the right to the possession of, immovable property situated outside England, except where: (a) the claim is based on a contract or equity between the parties; or (b) the question has to be decided for the purpose of the administration of an estate or trust and the property consists of movables or immovables in England as well as immovables outside England."

Rule 139: A court of a foreign country has no jurisdiction to adjudicate upon the title to, or the right to possession of, any immovable situate outside that country".

[44] The rule has been the subject of criticism in academic commentary, particularly because of its potential rigidity. The rule is liable to occasion injustice in certain circumstances, although I express no view as to whether such injustice arises in the instant case. For my part, I would prefer a more flexible formulation of the rule, broadly anchored in the principles of *forum conveniens*. However, the Privy Council has affirmed the rule (warts and all) in **Al-Thani**, and it is not, therefore, open for me to reformulate it.

[45] The rule was applied and explained by the House of Lords in **Hesperides Hotels Ltd v Aegean Turkish Holidays Ltd** [1979] AC 508.

[46] In **Hesperides Hotels Ltd v Aegean Turkish Holidays Ltd**, the House of Lords stated that disputes concerning land were best determined by the courts of the country where the land was located. In that case, two Greek Cypriot-owned companies, owners of hotels in Kyrenia, Northern Cyprus, sued a London travel agency and the London representative of the Turkish Federated State of Cyprus for damages arising from a conspiracy to trespass on their hotels and contents. This followed Turkey's 1974 invasion of Cyprus, after which the Greek Cypriot owners fled south, and the hotels were occupied and advertised in England for British tourists. The appellants claimed that the English courts had jurisdiction despite the foreign location, arguing that no title dispute existed and that the conspiracy originated in England. The House of Lords partly dismissed the appeal, affirming the entrenched rule that English courts lack substantive jurisdiction over claims to determine title to, right to possession of, or damages for trespass to foreign immovables – even where uncontested. The conspiracy claim failed, as it substantively entailed adjudication of

possessory rights over land, notwithstanding its tortious guise. By contrast, their Lordships upheld jurisdiction over claims to the hotels' contents, characterising them as conversion of chattels (where contemporaneous possession is immaterial). Declining to abrogate the immovables rule – by reason of its deep common law roots, imperatives of comity, and aptness for legislative reform – the action stood struck out *qua* land claims but permitted *qua* chattel contents.

[47] That case demonstrates that the rule is not confined to a case where legal title is formally put in issue. The House of Lords refused to allow the rule to be circumvented by recharacterising what was in substance a foreign land dispute as a conspiracy claim. Lord Wilberforce adopted Scarman LJ's reasoning in the Court of Appeal that, unless the court was prepared to adjudicate upon the right to possession of the foreign land, the alleged conspiracy could not be shown to be unlawful. Viscount Dilhorne likewise held that the rule could not be evaded by alleging conspiracy and that, insofar as the claim required proof of trespass to foreign land, the English court could not try it.

[48] That matters here because it illustrates a central feature of the rule: the court looks to the substance of the issue it is asked to decide, not merely to the label attached to the cause of action. If the determination of the claim depends upon adjudicating over rights in foreign land, the rule is engaged.

[49] The recent and authoritative restatement of the rule is found in **Kireeva v Bedzhamov** [2024] UKSC 39, [2025] AC 812. In that case, a Russian trustee in bankruptcy sought common law recognition in England of her position as trustee and sought assistance in relation to English immovable property forming part of what Russian law treated as the bankrupt's estate.

[50] The Supreme Court held, *inter alia*, that:

(a) the immovables rule was a substantive rule of English law that prevented recognition of any provision of foreign law or foreign court order purporting to affect rights to, or interests in, immovable property located in England;

(b) the rule reflected territorial sovereignty and the exclusive jurisdiction of the English courts over immovable property situated in England;

(c) as a matter of English law, the respondent's interests in the property were unaffected by the Russian bankruptcy order, and the English court could not take steps to deprive the respondent of those interests in favour of the appellant as trustee; and

(d) any modification of the immovables rule to enable assistance to a foreign bankruptcy trustee over immovable property in England would constitute a substantial departure from existing law and should be a matter for Parliament, not the courts.

[51] The Court held that, as a matter of English law, the respondent's interests in the English property were unaffected by the Russian bankruptcy order and that, absent statutory intervention, it was not open to the English court to deprive him of those interests in favour of the foreign trustee.

[52] The Supreme Court described the immovables rule as a substantive rule of English law. It emphasised that the rule reflects territorial sovereignty and the exclusive jurisdiction of the courts of the situs over immovable property situated there. It also rejected the invitation to extend the common law so as to permit the English court to appoint a receiver with a power of sale over immovable property in England for the benefit of the foreign trustee. The Court held that any such departure from existing law would be a matter for Parliament, not for judicial development.

[53] The facts in **Kireeva v Bedzhamov** bear setting out in detail.

[54] The respondent, a Russian citizen resident in England, held an interest in a London property. In 2018, he was declared bankrupt by a Russian court, and the appellant was appointed trustee of his bankruptcy estate. Under Russian law, the property formed part of that estate,

and the appellant was under a duty to realise it for creditors. She sought recognition at common law of the Russian bankruptcy order and of her appointment and applied to the English court for assistance in obtaining possession of and realising the property.

[55] The lower courts dismissed the application insofar as it related to immovable assets in England, holding that the immovables rule prevented the English court from recognising the appellant's claim to the property or assisting in its realisation.

[56] The appellant argued that the rule only prevented automatic vesting of the property in her as trustee, and did not preclude the court from recognising her rights and duties under Russian law or from appointing a receiver with a power of sale – the proceeds of sale, being movables, would fall within the recognised bankrupt estate. The respondent contended that the rule prevented any recognition of, or giving effect to, the appellant's claim to the property under Russian law.

[57] The Supreme Court dismissed the appellant's appeal, holding that the common law did not enable the English courts to assist a foreign trustee in bankruptcy by appointing a receiver with power of sale over immovable property situated in England.

[58] The appellant had argued that it was permissible and appropriate for the court to appoint a receiver over the property with a power of sale, because once the property was sold, the proceeds of sale would constitute movable property and would thus be recognised at common law as falling within the bankrupt estate. Further, the appellant submitted that it was incoherent to contemplate the appointment of a receiver of the rents and profits of the property, which he said the Court of Appeal had accepted as permissible, while maintaining that a receiver with a power of sale could not be appointed.

[59] Rejecting this and the other arguments prayed in aid by the appellant about the application (or otherwise) of the immovables rule, Lord Lloyd-Jones and Lord Richards (with whom Lord Reed PSC, Lord Briggs and Lady Rose JJSC, agreed) said:

"[90] As regards the submission that the proceeds of sale would fall within the bankrupt estate as recognised at common law, counsel relied on a dictum of Viscount Simonds in **Philipson-Stow v IRC** [1961] AC 727 at p 743: 'I have come to the conclusion that the proper law may change with a change in the subject-matter. Applying that to the present case, I should not exclude the possibility that, if and when the South African property is sold and the proceeds are gathered in, the proper law regulating the disposition will be English law. It is not necessary for the purpose of this case to decide that question.'

[91] The short answer to this submission is that, in the case of a foreign bankruptcy, the status of property located in this country as movable or immovable is determined as at the date of the bankruptcy order, that being the order from which, under the foreign bankruptcy law, the trustee's title to or interest in the property derives. The proceeds of a subsequent sale of the Property remain subject to the immovables rule and so will not be assets within the bankrupt estate.

…

[95] The dictum of Viscount Simonds in **Philipson-Stow v IRC** on which counsel relied was taken out of context …

[97] Viscount Simonds' dictum was directed to the effect of such a subsequent sale on the liability to estate duty on the death of the next life tenant, by which time the relevant assets would be the proceeds of sale, not the land in South Africa. The dictum has no application by analogy to the facts of the present case, where the critical date is that of the Russian bankruptcy order at which time the Respondent retained his interest in the Property which had not been sold. If anything, it is the majority decision on the appeal, not Viscount Simonds' dictum, which is in point.

[98] We turn to the second aspect of the Appellant's alternative submission, that there is an internal incoherence in permitting the appointment of a receiver of the Property's rents and profits but not of a receiver with a power of sale. The expression "rents and profits" is apt to cover a wide range of income. It may be that, with the benefit of full information, some such income would properly be characterised as movable property, although we are far from satisfied that this is correct. We are, however, unable to see how that could be correct as regards, for example, the right to receive rent payable under a lease. Viewed from the perspective of both lessor and lessee, a lease of land is immovable property and the right to receive rent is one of the incidents of that immovable property. In our judgment, it would not in a case such as the present be open to the court to appoint a receiver of the rents and profits of land within the jurisdiction, with the exception of such identified rents and profits, if any, as were properly characterised as

movable property and were received pursuant to rights existing as assets at the date of the foreign bankruptcy.

…

[101] For the reasons set out above, we consider that the common law does not at present enable the English courts to provide assistance to a foreign trustee in bankruptcy by appointing a receiver with a power of sale over immovable property. It is therefore necessary to consider whether this court should extend the common law so as to enable assistance to be provided."

[60] Lord Lloyd-Jones and Lord Richards went on to provide the following explanation about the decision of the House of Lords in **Hesperides Hotels Ltd** and some of the other previous authorities on the subject:

"[104] In **Hesperides Hotels Ltd v Aegean Turkish Holidays Ltd** [1979] AC 508 the House of Lords not only refused an invitation to depart from that part of the rule in the Moçambique case which precluded actions for damages for infringement of property rights but extended it by holding that it applied when no question of title was involved. One reason given by Lord Wilberforce (at p 537A–B) for not modifying the rule was that 'the nature of the rule itself, involving, as it clearly must, possible conflict with foreign jurisdictions, and the possible entry into and involvement with political questions of some delicacy, does not favour revision (assuming such to be logically desirable) by judicial decision, but rather by legislation'. Viscount Dilhorne considered (at p 541E–F) that questions of comity of nations might well be involved and if any change in the law was to be made it should only be made after detailed and full investigation of all the possible implications which the court could not make …

…

[110] It may be said, with some justification, that the application of the immovables rule in the case of a foreign bankruptcy produces a surprising result in leaving the bankrupt's immovable property in this country to be enjoyed by the bankrupt or to be taken in execution by individual creditors on a first come, first served basis, when in a bankruptcy under the laws of both this country and the foreign state (in this case, Russia), immovable property would form part of the bankrupt's estate. That, however, is a policy reason to be considered in the context of any proposal for legislative change. Further, by reason of the CBIR, this result is avoided where the bankruptcy order is sought and made in the debtor's centre of main

> interests. In the present case, it was open to the Respondent's creditors to apply for a bankruptcy order in this country, where he had his centre of main interests and his domicile for bankruptcy purposes, rather than in Russia."

[61] **Kireeva** is of considerable significance for the present case. It establishes, for present purposes, at least the following propositions. First, foreign insolvency law does not, at common law, alter or affect rights in English immovable property. Second, a foreign trustee does not, by virtue of foreign bankruptcy law alone, acquire any recognised proprietary or equitable interest in English land. Third, the rule applies to equitable and beneficial interests in land as much as it does to legal title. Fourth, common law principles of assistance and modified universalism do not override the rule. Fifth, absent a relevant statutory exception, the courts will not take steps which have the effect of depriving the holder of interests in English land in favour of a foreign insolvency office-holder.

[62] The rules quoted above from Dicey & Morris are significant for two reasons beyond their immediate terms.

[63] First, they confirm that the rule is directed to jurisdiction and justiciability, not merely to a choice-of-law inquiry. Second, they show the asymmetry built into the common law. The courts may, in limited circumstances, act *in personam* in relation to foreign land, but the courts of the situs will not recognise a foreign court as having jurisdiction to adjudicate upon title to, or the right to possession of, immovable property situated there.

[64] The Defendants are, in my judgment, correct to submit that the rule is broader than a narrow dispute over formal legal title. The modern authorities make clear that it applies wherever the determination of the claim depends upon rights to or interests in foreign immovable property, whether or not title is formally disputed. It also applies to equitable and beneficial interests. The Claimant accepted as much in his own skeleton argument, and rightly so.

[65] The rationale of the rule also explains why convenience cannot displace it. It reflects domestic public policy, territorial sovereignty, the equality and independence of states, comity, and the need to avoid conflicting decisions by courts of different jurisdictions. It is

not merely a case-management preference. Where it applies, the court does not proceed because the subject matter is not one which the court could or should adjudicate upon.

The exceptions and the *in personam* jurisdiction

[66] It is correct that the immovables rule is subject to limited exceptions. The principal exception, relied upon by the Claimant, is the Court's *in personam* jurisdiction, under which the court may enforce an existing personal obligation between the parties, even though the obligation relates to foreign land. The leading authority remains **Penn v Lord Baltimore** (1750) 1 Ves Sen 444, where Lord Hardwicke LC decreed specific performance of an English agreement concerning the boundaries between Pennsylvania and Maryland. The decree operated *in personam* against the defendant, whose conscience was bound by the contract, rather than *in rem* upon the land itself.

[67] Despite the court's inability to enforce its decree *in rem*, it exercised jurisdiction *in personam* over the defendant, who was within the jurisdiction of the English court. Lord Hardwicke emphasised that the court could enforce the agreement because the defendant's conscience was bound by it.

[68] This principle has been consistently upheld in subsequent cases, confirming that English courts can exercise *in personam* jurisdiction over foreign land disputes involving contracts, fraud, and trusts, provided the defendant is within the jurisdiction. The courts enforce such jurisdiction by means of personal processes, such as writs of sequestration or commitment, but refrain from directly determining the title to foreign land: see, by way of examples, **Hamlin v Hamlin** [1985] 3 W.L.R. 629 and **Richard West and Partners (Inverness) Ltd and Another v Dick** [1969] 2 Ch. 424, CA**.**

[69] Modern authorities indicate that the exception is narrow. It applies where the court is enforcing a pre-existing personal obligation, such as a contractual obligation to transfer land, or a trust or fiduciary obligation already existing between the parties. What it does not do is allow the court to determine, as the first step, whether a claimant has a proprietary or

equitable interest in foreign land and then to use that determination as the basis for coercive relief. The exception is not a device by which the court may circumvent the rule simply because the defendant is before the court.

[70] In that regard, it is correct to note that the courts enforce such jurisdiction through personal processes, but refrain from directly determining title to foreign land. The distinction is fundamental. The exception applies where conscience is already bound by a recognised personal obligation. It is not engaged where the court must first decide, as between the parties, whether the claimant has the relevant proprietary right in foreign land.

[71] I, therefore, do not accept the broad way in which the Claimant seeks to deploy the *in personam* line of authority. As I explain later in this judgment, the Claimant does not come to this Court with some pre-existing, recognised, personal equity owed to him by the Defendants in relation to the London Property. He comes instead as a foreign insolvency office-holder seeking to establish that the Debtor had a beneficial interest in English land and that such interest is to be treated as vested in the foreign bankruptcy estate. That is a materially different juridical exercise.

[72] The Claimant also relies upon **Part XIX of the IA 2003.** It is therefore necessary to address the relationship between cross-border insolvency assistance and the immovables rule.

[73] It is uncontroversial that modern insolvency law recognises the importance of cross-border cooperation. Cases such as **Cambridge Gas Transportation Corporation v Official Committee of Unsecured Creditors of Navigator Holdings plc** [2007] 1 AC 508, **HIH Casualty and General Insurance Ltd** [2008] 1 WLR 852, and **Singularis Holdings Ltd v PricewaterhouseCoopers** [2015] AC 1675 all recognise, in one form or another, the importance of judicial cooperation in multinational insolvency matters.

[74] But those authorities do not assist the Claimant in the way he suggests. First, **Cambridge Gas** has been disapproved in material respects. Second, and more fundamentally, **Rubin v Eurofinance SA** [2013] 1 AC 236, makes clear that the principle of modified universalism

does not override established rules of private international law. Cooperation has limits. It operates within the boundaries of local law and local public policy; it does not override them.

[75] That is also consistent with **Singularis**, where Lord Sumption stressed that modified universalism is part of the common law but is subject to local law and local public policy, and that the court can act only within the limits of its statutory and common law powers. Those observations are directly relevant here.

[76] The Defendants' submissions on **Part XIX** are, in my judgment, correct.

[77] **Part XIX** permits the Court to grant assistance to foreign insolvency representatives. **Section 467** (which is included in **Part XIX**) is framed in broad terms. But nothing in **Part XIX** indicates a legislative intention to displace the immovables rule. In other words, nothing in the language of the statute expressly authorises the Court to determine title to, or proprietary or equitable interests in, foreign immovable property. The statutory powers must therefore be interpreted consistently with established principles of private international law, including the immovables rule.

[78] That conclusion follows from orthodox principles of statutory interpretation. A statute will not be construed as abrogating fundamental common law principles, especially principles of jurisdiction and public policy in private international law, unless Parliament has evinced a clear intention to do so: see **Bennion, Bailey and Norbury on Statutory Interpretation**, 8th Edn, 2020, Eds Bailey and Norbury, at [27.1] ff. **Part XIX** contains no such clear provision.

[79] The structure of **Part XIX** points the same way. It concerns assistance to foreign representatives. It may facilitate the collection of assets within the jurisdiction, the prevention of dissipation, recognition of the foreign office-holder's standing, and related matters. It does not follow that it authorises this Court to determine the ownership of land situated abroad where doing so would contradict longstanding jurisdictional rules.

[80] Nor do the comparable English regimes assist the Claimant. The English statutory provisions do not suggest that insolvency assistance regimes authorise the courts to determine rights

in foreign land contrary to the immovables rule. On the contrary, the authorities relied upon by the Defendants demonstrate that immovable property remains subject to the law and courts of the situs unless clear statutory language provides otherwise.

[81] The practical consequences also support that conclusion. If **Part XIX** were construed as the Claimant suggests, this Court could make orders determining rights in English land which the English courts would not be bound to recognise. That would create the risk of conflicting judgments across jurisdictions and of orders lacking practical effect. Courts should be slow indeed to construe statutes as authorising such results.

[82] I therefore accept the substance of the Defendants' submission that **Part XIX** does not enlarge this Court's subject-matter jurisdiction so as to permit it to determine legal or equitable interests in land situated in England.

[83] It is against that legal background that the Court must consider the present claim.

Application to the Claim

The pleaded case and the true character of the dispute

[84] In doing so, the Court must look to substance, not form. That is especially important where corporate structures are alleged to have been used as part of a scheme to conceal beneficial ownership. The Court must, therefore, ask what issue it is in truth being asked to determine, and what relief it is in truth being asked to grant.

[85] The Claimant's pleaded case is highly significant. At paragraph 24.2 of the Statement of Claim (set out below), the Claimant pleads that he had the right to control the beneficial interest of the Debtor in the London Property, and that the Debtor was required to surrender to the Claimant that interest for the benefit of the estate.

[86] At paragraph 37.2 of the Statement of Claim the Claimant seeks declarations, among other things, that from the date of its purchase by K Legacy, the London Property was held on

trust for, and was beneficially owned by, the Debtor; and that the Claimant is entitled to have the Debtor's beneficial interest in the Property surrendered to, and thereby vested in, him for the benefit of the estate.

[87] At paragraph 37.3, the Claimant seeks further orders that the Debtor must surrender his beneficial interest in the London Property to the Claimant and execute a deed of equitable assignment to that effect.

[88] These passages matter because they reveal unmistakably that the London Property is not some incidental or peripheral element in the case. The Claimant seeks a declaration that the Debtor had a beneficial interest in the London Property and seeks consequential relief requiring the surrender or assignment of that interest. The Claim, therefore, requires the Court to determine whether the Debtor possessed a beneficial interest in land situated in England.

[89] The Claimant seeks to frame the case as one principally concerned with the ownership of the Shares, i.e., shares in a BVI company. But I do not accept that characterisation. The Shares represent the ownership of the company through which the London Property is held. The real prize, and the substantive object of the proceedings, is the London Property. The claim to the Shares is, on the Claimant's own case, the route by which he seeks ultimately to establish and obtain control of the alleged beneficial interest in that Property.

[90] The fact that the London Property is held through a BVI company does not alter the essential juridical character of the dispute between the Parties. If the immovables rule could be avoided merely by interposing a corporate vehicle between the claimant and the land, the rule would be readily circumvented. A dispute over land could be transformed into a dispute over shares by placing the property in a company incorporated in another jurisdiction. Such an approach would undermine the purpose of the rule and erode the principle that rights in land are governed by the law of the place where the land is situated.

[91] The Court is, therefore, required to look through the corporate wrapper and identify the real issue. That issue is whether the Debtor had a beneficial interest in the London Property and

whether the Claimant, as foreign insolvency representative, is entitled to relief predicated on that beneficial interest. That is, in substance, a dispute concerning rights in English immovable property.

<u>The Claimant's preliminary points and the alleged *volte face*</u>

[92] The Claimant alleges that the Defendants have performed a *volte-face* regarding the immovables rule. He maintains that while he now accepts – contrary to his prior stance – that subject-matter jurisdiction is ultimately for the Court to decide, the Defendants' change of position remains highly relevant to: (a) the Court's evaluation of any contrary arguments on the merits, and (b) costs.

[93] I respectfully disagree with the argument advanced in (a) above. The immovables rule raises a pure question of law to be resolved on its substantive merits alone. Neither waiver nor any similar doctrine overrides this argument. The ultimate decision for this Court to make is whether it has jurisdiction to deal with the Claim. Even if the parties had agreed that the Court had jurisdiction, or had submitted to its jurisdiction, I am not sure that this Court would be required to exercise it. As Dicey & Morris pointedly observe, at 24-034 (omitting the footnotes in that paragraph), "If the 'Moçambique rule' is one of policy, as it was held to be in the leading case, the better opinion would seem to be that it cannot be waived by any agreement between the parties."

[94] In his well-known monograph on **Private International Law**, Professor Briggs makes this point in even more emphatic terms, stating:[3]

> "Where the court has no jurisdiction over the subject matter of the claim, there can be no question of its having jurisdiction on the basis of personal submission by the defendant, or the absence of jurisdiction being overlooked by a defendant, or the defendant being estopped from taking the point.[4]

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[3] See Briggs, A, "Private International Law in English Courts", Second Edition, OUP, 2022, p. 134.

[4] Referring to **J&F Stone v Levitt** [1947] A.C. 209; and **Re Oriel** [1986] 1 W.L.R. 180.

[95] The substance of this point was acknowledged in **Griggs Group Ltd v Evans** [2004] EWHC 1088 (Ch). In that case, Mr Peter Prescott KC, sitting as a deputy Judge of the High Court, said:[5]

> "In the ordinary way, parties cannot confer jurisdiction upon a court which it does not otherwise have. If parties cannot do it on purpose, I do not see how they can by mere inadvertence. If a court indeed lacks jurisdiction, and the point is taken for the first time on appeal, then, as it seems to me, the appeal is bound to succeed. Although no authorities for those propositions were cited to me, I conceive that they are supported by the decisions of the Privy Council in **Raja Setrucharlu Ramabhadra Raju Bahadur v Maharaja of Jeypore AIR** [1919] PC 150 and of Lord Greene MR in **Upper Agbrigg Assessment Committee v Bents Brewery Co Ltd** [1945] KB 196, 200. If that is so, it would be a pointless waste of time and money for the court of first instance, if apprised of the error before its order was formally drawn up and entered, to refuse to correct it. There might be a stringent order as to costs, but that is another matter."

[96] It follows that the alleged *volte-face* is irrelevant to the determination of jurisdiction. In any event, even if the Defendants had performed a *volte face*, the Claimant should have realised, at the outset, i.e., before the Claim was issued, that the Court was unlikely to have jurisdiction to try the Claim.

[97] So far as the issue of costs is concerned, the conduct of a party is a relevant matter for the Court to take into account in the exercise of its discretion under **Parts 64 and 65 of the ECSC CPR**. Whether or not it is appropriate for it to do so, based on the alleged *volte-face*, is a matter for submission at a consequentials hearing.

[98] It is clear, therefore, that if a court lacks jurisdiction to adjudicate upon rights in English land, that defect cannot be cured by waiver, acquiescence, estoppel or tactical choices made by the parties. The parties cannot confer upon a court jurisdiction which it does not otherwise possess.

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[5] [2004] EWHC 1088 (Ch), at [20].

[99] Accordingly, even if the Defendants' position evolved over time, that would not alter the legal question the Court must answer. The alleged *volte-face* may have some relevance to costs. It has none to the existence or absence of subject-matter jurisdiction.

[100] The Claimant also emphasises that the Court has personal jurisdiction over the Defendants and that no *forum conveniens* stay is sought. Again, that does not answer the point. The immovables rule is not concerned with personal jurisdiction. A court may have personal jurisdiction over all parties and yet be unable to adjudicate upon a dispute concerning foreign land. That is well established.

[101] Nor does the practical inconvenience of dividing issues between jurisdictions alter the analysis. If the Claim requires the Court to determine rights in English immovable property, the fact that it might be more convenient to determine associated share issues here cannot enlarge the Court's competence.

<u>The Claimant's "incidental issue" argument</u>

[102] The Claimant submits that the issue concerning the London Property arises only incidentally to the determination of the ownership of the Shares. He relies, in this respect, on cases recognising that a foreign land question may sometimes arise collaterally within proceedings otherwise properly within the jurisdiction.

[103] There is no doubt that such cases exist. Lord Herschell in **Moçambique** himself recognised that in the exercise of an undoubted jurisdiction, a question concerning foreign land may arise incidentally. But that does not mean that every case in which foreign land forms part of the factual matrix falls outside the rule.

[104] The relevant question is one of substance. Is the foreign land issue truly collateral, or is it central to the claim? In my judgment, it is plainly central here.

[105] It is an axiomatic principle of universal application that, as a general rule, in scrutinising a transaction or a structure presented to it, a court will look at the substance of that transaction

or structure to decide what it involves. This principle applies as much to the immovables as it does to any circumstances that receive the court's scrutiny. The courts will work on the broad premise that legal arrangements between parties cannot simply mask the actual underlying transaction or structure of a transaction or seek to circumvent or avoid a particular rule of law, especially where it is designed to protect the rights of a third party.

[106] This principle also applies to the immovables rule. This Court must examine the substance of the Claimant's case rather than its formal structure. Attempts to circumvent the immovables rule have been unsuccessful in several cases. They include cases going back to the early 20th Century, when the scope of the rule was in the process of being clarified properly (such as **Re Hoyles** [1911] 1 Ch. 179 and **Re Berchtold** [1923] 1 Ch. 192), and more recently, **Hesperides Hotels Ltd, Kireeva** and **Al-Thani**.

[107] The principle is well illustrated by the decision in **Kireeva**, in which the UK Supreme Court held that a foreign trustee in bankruptcy could not assert rights over immovable property located in England in order to circumvent the immovables rule.

[108] In **Hesperides Hotels Ltd**, the claimant sought to frame what was, in reality, a claim in trespass as a claim in conspiracy. The House of Lords emphatically rejected that attempt. Lord Fraser of Tullybelton stated:[6]

> "In my opinion there is no proper averment of a conspiracy between the defendants even in the past, still less in the future, nor (assuming that there is such a conspiracy) of how damage has been caused or will be caused by it in England. <u>The case of conspiracy is simply an attempt to dress up the substantive claim, which is for trespass, in a different guise and in my opinion the attempt fails</u>."

[109] One needs to go little beyond the terms of the Statement of Claim to know that the Claimant's claim is a claim relating to the London Property and is, therefore, a claim over land in another jurisdiction.

[6] [1979] A.C. 508 at 546.

[110] The provisions of the Statement of Claim, which set out how the London Property came to be in the legal ownership of the First Defendant and how the Shares came to be in the ownership of the Second Defendant, make this clear. One needs only to go to the substantive relief sought by the Claimant to know that the Claim involves the London Property and is caught by the immovables rule. However, before that, the following provisions of the Statement of Claim:

> "21 It is therefore to be inferred that, at all material times up until the date of the Corporate Governance Order (a) Salamander Nominees held the Shares as nominee and/or bare trustee for the Debtor; alternatively Mileson held the beneficial interest in the Shares as nominee and/or bare sub-trustee for the Debtor and (b) K Legacy was a Debtor-Controlled Entity within the meaning thereof.
>
> 22 Further or in the alternative, it is to be inferred that the Debtor used K Legacy to hold legal title to the Property on trust for him; alternatively he used Mileson to hold the beneficial interest in the Property on sub-trust for him, and that it the Property ultimately belonged beneficially to him by reason of (a) him having funded its purchase and/or (b) agreement between him and K Legacy and/or Mileson that it would be so held, pursuant to which the Debtor funded its purchase and expenses associated with it.
>
> 23 Although there is a purported Nominee Agreement between K Legacy and Mileson dated 26 April 2016 (i.e. pre-dating the purchase of the Property), which purports to provide that the former holds the Property as nominee for the latter as its beneficial owner, the Applicant contends that it is of no legal effect and/or is a sham and/or is not inconsistent with the Debtor owning the ultimate beneficial interest in the Property.
>
> 24 In the premises:
>
> 24.1 The Applicant (a) held, and had the right to control, all of the Debtor's economic and corporate governance rights in relation to K Legacy and (b) was entitled to be registered as the legal and beneficial owner of the Shares; and/or
>
> 24.2 The Applicant had the right to control the beneficial interest of the Debtor in the Property, and the Debtor was required to surrender

to the Applicant (and the latter was entitled to recover) that interest for the benefit of the Estate."

[111] At para. 37 of the Statement of Claim, the relief sought by the Claimant includes:

> "37.2 Declarations that: (a) From the date of incorporation of K Legacy, the Shares were beneficially owned by the Debtor and the Applicant is now the sole legal and beneficial owner of the Shares for the benefit of the Estate; (b) From the date of its purchase by K Legacy, the [London] Property was held on trust for, and was beneficially owned by, the Debtor; and/or (c) The Applicant is entitled to have the Debtor's beneficial interest in the Property surrendered to, and thereby vested in, him for the benefit of the Estate;
>
> 37.3 Further orders that: … (f) The Debtor must surrender his beneficial interest in the [London] Property to the Applicant and he shall (or the Applicant may) forthwith execute a deed of equitable assignment to that effect in favour of the Applicant … "

[112] The Claimant seeks declarations that the London Property was held on trust for, and beneficially owned by, the Debtor, and further orders requiring the surrender or transfer of that beneficial interest. The Court cannot grant that relief without deciding whether the Debtor had a beneficial interest in the London Property. That issue is therefore not incidental. It lies at the very centre of the Claim.

[113] I, therefore, reject the Claimant's attempt to characterise the London Property issue as merely collateral or incidental to the share dispute. The share dispute is the mechanism by which the Claimant seeks to obtain relief in relation to the London Property; it is not a distinct and independent dispute in which the Property is merely a background fact.

The equitable *in personam* exception

[114] The Claimant next relies on the equitable *in personam* exception. I mentioned this briefly above, but it bears repeating here.

[115] The Claimant submits that because the Defendants are before the Court, the Court may determine beneficial interests in foreign property and make orders requiring the Defendants to deal with that property accordingly.

[116] I cannot accept that submission.

[117] As already explained, the **Penn v Lord Baltimore** jurisdiction applies where the Court is enforcing a pre-existing personal obligation between the parties. Examples include a contract to transfer land, or an existing trust or fiduciary relationship, where conscience is already bound. In such a case, the decree operates against the person, not directly upon the land.

[118] That is not this case. The Claimant does not come before the Court to enforce some pre-existing, recognised, *in personam* obligation owed to him by the Defendants in respect of the London Property. Rather, he comes as a foreign insolvency representative asking the Court first to determine that the Debtor had a beneficial interest in English land and only then to grant relief based on that determination.

[119] That is precisely the type of case to which the immovables rule applies. The Court would first need to adjudicate the existence of an alleged beneficial interest in foreign land. The *in personam* exception cannot be used to bootstrap such a determination.

[120] The point is reinforced by **Kireeva**. The Supreme Court rejected the attempt to recast the foreign trustee's powers and duties under foreign insolvency law as a "legal or equitable interest" capable of recognition by the forum court. English law did not recognise the English property as part of the Russian bankruptcy estate, and the court had no power to deprive the respondent of his interests in the Property in favour of the foreign trustee.

[121] That reasoning applies, *a fortiori*, here. As a matter of BVI and English private international law, the Claimant does not acquire a recognised proprietary or equitable interest in the London Property merely because foreign bankruptcy law says that the Debtor's assets worldwide form part of the foreign estate. The Claimant is, therefore, for present purposes, a stranger to any alleged trust or equity affecting the London Property. He cannot invoke the

Penn v Lord Baltimore exception to enforce an equity which the law of the forum does not recognise as vested in him.

[122] I respectfully accept the Defendants' submission: the Claimant's invocation of case analogies to establish some relationship with the Second Defendant demands a novel and impermissible expansion of the 'equity exception' to the immovables rule. The exception to the rule admits of no such extension.

[123] The authorities confine such jurisdiction – rigidly and exclusively – to cases where a pre-existing personal relationship or obligation is alleged to subsist as between the parties themselves, enabling equity to enforce performance *in personam*, conformably with the foundational principle in **Penn v Lord Baltimore** and as Parker J held in **Deschamps v Miller** [1908] 1 Ch 856 at 863, depending "on the existence between the parties to the suit of some personal obligation arising out of contract or implied contract, fiduciary relationship or fraud..."

[124] No authority supports the proposition that a stranger to such an equity (as the Claimant squarely is here) may invoke this exception in pursuit of declaratory or other relief as to a trust or equitable interest. **Al-Thani** affirms this with unmistakable force: equitable jurisdiction turns solely on personal equities binding the parties *inter se* – never collateral or extraneous claims. Professor Adrian Briggs, in his book, "Civil Jurisdiction and Judgments" (Eighth Edition), November 2025, Informa Law from Routledge, at [2.03], states the position irrefutably: "'For the principle in **Penn v Baltimore** to apply, there must be, or be alleged to be, <u>a pre-existing personal relationship between the parties</u>, the obligations of which the court may be called upon to enforce."

[125] The Claimant advances no suggestion that the Defendant's alleged change of position constitutes an agreement *inter partes* to submit to this forum's jurisdiction, i.e., a contractual relationship conferring personal jurisdiction. For the absolute avoidance of doubt, I record that any such contention would have been rejected out of hand. **Penn v Lord Baltimore** mandates that the relationship <u>be pre-existing</u>; no subsequent conduct or

understanding can retroactively confer jurisdiction. In any event, nothing in the exchanges between the Parties' legal advisers evinces any such agreement.

[126] It follows ineluctably that the analogy the Claimant seeks to draw from authorities postulating a personal relationship between a land-owner's personal representative and the counterparty finds no counterpart whatsoever in the instant case.

[127] I therefore reject the Claimant's reliance on the equitable *in personam* exception.

<u>**Part XIX** and the statutory route</u>

[128] The Claimant then relies on **Part XIX of the IA 2003**, contending that this Court may grant relief in aid of the United States bankruptcy proceedings and determine the Debtor's interests in property worldwide, including the London Property.

[129] I reject that submission for the reasons already given in the general discussion of **Part XIX**, and I adopt the substance of the Defendants' analysis at paragraphs 32 to 44 of their skeleton argument.

[130] The relevant parts of **Part XIX** state:

> "467.
>
> (1) For the purposes of this section 'property' means property that is subject to or involved in the foreign proceeding in respect of which the foreign representative is authorised.
>
> (2) A foreign representative may apply to the Court for an order under subsection (3) in aid of the foreign proceeding in respect of which he or she is authorised.
>
> (3) Subject to section 468, upon an application under subsection (1), the Court may—
>
> (a) restrain the commencement or continuation of any proceedings, execution or other legal process or the

levying of any distress against a debtor or in relation to any of the debtor's property;

(b) subject to subsection (4), restrain the creation, exercise or enforcement of any right or remedy over or against any of the debtor's property;

(c) require any person to deliver up to the foreign representative any property of the debtor or the proceeds of such property;

(d) make such order or grant such relief as it considers appropriate to facilitate, approve or implement arrangements that will result in a co-ordination of a Virgin Islands insolvency proceeding with a foreign proceeding;

(e) appoint an interim receiver of any property of the debtor for such term and subject to such conditions as it considers appropriate;

(f) authorise the examination by the foreign representative of the debtor or of any person who could be examined in a Virgin Islands insolvency proceeding in respect of a debtor;

(g) stay or terminate or make any other order it considers appropriate in relation to a Virgin Islands insolvency proceeding; or

(h) make such order or grant such other relief as it considers appropriate.

(4) An order under subsection (3) shall not affect the right of a secured creditor to take possession of and realise or otherwise deal with property of the debtor over which the creditor has a security interest.

(5) In making an order under subsection (3), the Court may apply the law of the Virgin Islands or the law applicable in respect of the foreign proceeding.

468

(1) In determining an application under section 467, the Court shall be guided by what will best ensure the economic and expeditious administration of the foreign proceeding to the extent consistent with –

(a) the just treatment of all persons claiming in the foreign proceeding;

(b) the protection of persons in the Virgin Islands who have claims against the debtor against prejudice and inconvenience in the processing of claims in the foreign proceeding;

(c) the prevention of preferential or fraudulent dispositions of property subject to the foreign proceeding, or the proceeds of such property;

(d) the need for distributions to claimants in the foreign proceedings to be substantially in accordance with the order of distributions in a Virgin Islands insolvency; and

(e) comity.

…

(3) The Court shall not make an order under section 467 that is contrary to the public policy of the Virgin Islands".

[131] **Part XIX of the IA 2003** allows a foreign representative to apply to the BVI Court for orders in aid of foreign insolvency proceedings. In particular, **s. 467** permits the Court, upon such an application, to grant relief, including orders requiring persons to deliver up property of the debtor or granting such other relief as the Court considers appropriate. However, the Defendants submit that these statutory powers must be interpreted consistently with established principles of private international law, including the immovables rule. Their contentions may be summarised in the following few short points.

[132] First, the Defendants argue that nothing in **Part XIX** indicates a legislative intention to displace that rule. The statutory language permits the Court to assist foreign insolvency proceedings, but it does not expressly authorise the Court to determine title to, or proprietary interests in, foreign immovable property.

[133] Second, the Defendants submit that neither the insolvency code in the UK nor, by analogy, that in the BVI suggests that provisions such as those relied upon by the Claimant extend to adjudicating rights in foreign land. On the contrary, the authorities recognise that property

located abroad may fall outside the jurisdiction of the assisting court where the relevant rules of private international law prevent such adjudication.

[134] Third, the Defendants emphasise that courts should be slow to construe statutes as authorising orders that would conflict with the law of the situs of property. If the BVI Court were to determine proprietary interests in land situated in England, any such determination might not be recognised or enforceable by the English courts.

[135] Accordingly, the Defendants contend that **Part XIX** does not provide a basis for the Claimant to obtain declarations or orders determining the legal or beneficial ownership of the London property or compelling its transfer.

[136] In my judgment, these and the other propositions summarised in paras. 32-44 of the Defendants' skeleton argument are correct.

[137] As stated above, it is well established that courts will not adjudicate upon title to, or proprietary rights in, foreign immovable property. Such matters fall exclusively within the jurisdiction of the courts of the situs. This rule is not merely procedural but jurisdictional in nature. It reflects the principle that rights in land are governed by the law of the place where the land is situated and that only the courts of that place can authoritatively determine those rights. In the present case, the property in question (i.e., the London Property) is situated in England. A determination by this Court that the Debtor is the beneficial owner of that property would necessarily amount to an adjudication upon rights in foreign land.

[138] As the Defendants correctly submit, and as noted above, a statute will not be interpreted as displacing established common law principles of private international law unless the legislative intention to do so is clear and express. **Part XIX of the IA 2003** contains no such indication. While **s. 467** gives the Court broad powers to grant relief in aid of foreign proceedings, those powers are framed in general terms and are not directed to altering the limits of the Court's jurisdiction in relation to foreign immovable property.

[139] Absent clear statutory language, the Court should not construe the provision as authorising the determination of proprietary interests in land situated abroad. The purpose of **Part XIX** is to enable the BVI Court to assist foreign insolvency proceedings, for example, by recognising foreign representatives, facilitating the collection of assets within the jurisdiction, and preventing dissipation of property. It does not follow that the statute permits the Court to determine ownership of assets located outside its jurisdiction if doing so would contradict established jurisdictional rules. Accordingly, the statutory assistance regime does not enlarge the Court's subject-matter jurisdiction.

[140] The Defendants are also correct to observe that construing **Part XIX** as authorising determinations of foreign land ownership would risk producing orders incapable of recognition or enforcement at the situs. English courts are not bound to recognise a foreign judgment purporting to determine title to English land. The result could, therefore, be conflicting decisions between the courts of the two jurisdictions. Courts generally avoid interpreting statutes in a manner that would produce orders lacking practical effect or that create jurisdictional conflicts.

[141] For these reasons, the propositions advanced by the Defendants in paragraphs 32–44 are well-founded. The essential principle here is that **Part XIX** of the **Insolvency Act 2003** provides a mechanism for assisting foreign insolvency proceedings, but it does not displace the immovables rule or confer jurisdiction on the BVI Court to determine legal or equitable interests in land situated abroad. Nothing in **Part XIX** suggests that the legislature intended to displace the immovables rule or permit this Court to determine proprietary rights in foreign land. To the contrary, the reasoning in **Kireeva** confirms that proprietary rights in English land remain governed exclusively by English law, notwithstanding the existence of foreign insolvency proceedings.

[142] The provisions of **Part XIX** permit this Court to grant assistance to foreign insolvency representatives. The importance of cross-border cooperation has been recognised in several cases, such as **Cambridge Gas Transportation Corporation v Official**

Committee of Unsecured Creditors of Navigator Holdings Plc [2006] UKPC 26, [2007] 1 A.C. 508, PC.

[143] That case emphasised the importance of judicial cooperation in cross-border insolvency proceedings, although aspects of its reasoning were later disapproved by the Supreme Court in **Rubin v Eurofinance**.

[144] In **HIH Casualty and General Insurance Ltd** [2008] UKHL 21, [2008] 1 W.L.R. 852, Lord Hoffmann articulated the modified universalism principle and its limits in the following terms:[7]

> "The primary rule of private international law which seems to me applicable to this case is the principle of (modified) universalism, which has been the golden thread running through English cross-border insolvency law since the eighteenth century. That principle requires that English courts should, so far as is consistent with justice and United Kingdom public policy, co-operate with the courts in the country of the principal liquidation to ensure that all the company's assets are distributed to its creditors under a single system of distribution. That is the purpose of the power to direct remittal."

[145] The principle of modified universalism was restated by Lord Sumption JSC in **Singularis Holdings Ltd v PricewaterhouseCoopers** [2014] UKPC 36, relying upon the observations of their lordships in **HIH Casualty and General Insurance Ltd** [2008] UKHL 21, as follows:

> "[19] … the principle of modified universalism was accepted in principle by Lord Phillips, Lord Hoffmann and Lord Walker in **Re HIH Casualty**, and by Lord Collins (with whom Lord Walker and Lord Sumption agreed) in **Rubin v Eurofinance SA**. Nothing in the concurring judgment of Lord Mance in that case casts doubt upon it. Lord Collins summarised the position in this way ([2012] 2 BCLC 682, [2013] 1 AC 236 at [29]–[33]):
>
> > '[29] Fourth, at common law, the court has power to recognise and grant assistance to foreign insolvency proceedings. The common law principle is that assistance may be given to foreign office-holders in insolvencies with an international element. The underlying principle has been stated in different ways: "recognition … carries with it the active assistance of the court" (**Re African Farms Ltd**

[7] [2008] UKHL 21, at [30].

[1906] TS 373 at 377); “This court … will do its utmost to co-operate with the United States Bankruptcy Court and avoid any action which might disturb the orderly administration of [the company] in Texas under ch 11” (**Banque Indosuez SA v Ferromet Resources Inc** [1993] BCLC 112 at 117).

[30] In **Credit Suisse Fides Trust v Cuoghi** [1997] 3 All ER 724 at 730, [1998] QB 818 at 827, Millett LJ said: “In other areas of law, such as cross-border insolvency, commercial necessity has encouraged national courts to provide assistance to each other without waiting for such co-operation to be sanctioned by international convention … It is becoming widely accepted that comity between the courts of different countries requires mutual respect for the territorial integrity of each other's jurisdiction, but that this should not inhibit a court in one jurisdiction from rendering whatever assistance it properly can to a court in another in respect of assets located or persons resident within the territory of the former.”

[31] The common law assistance cases have been concerned with such matters as the vesting of English assets in a foreign officeholder, or the staying of local proceedings, or orders for examination in support of the foreign proceedings, or orders for the remittal of assets to a foreign liquidation, and have involved cases in which the foreign court was a court of competent jurisdiction in the sense that the bankrupt was domiciled in the foreign country or, if a company, was incorporated there …

[33] One group of cases involved local proceedings which were stayed or orders which were discharged because of foreign insolvency proceedings. Thus in **Banque Indosuez SA v Ferromet Resources Inc** [1993] BCLC 112 an English injunction against a Texas corporation in Chapter 11 proceedings was discharged; cf **Re African Farms Ltd** [1906] TS 373 (execution in Transvaal by creditor in proceedings against English company in liquidation in England stayed by Transvaal court), applied in **Turners & Growers Exporters Ltd v Ship “Cornelis Verolme”** [1997] 2 NZLR 110 (Belgian shipowner in Belgian bankruptcy: ship released from arrest); Modern Terminals (Berth 5) Ltd v States Steamship Co [1979] HKLR 512 (stay in Hong Kong of execution against Nevada corporation in Chapter 11 proceedings in United

> States Federal Court in California), followed in **CCIC Finance Ltd v Guangdong International Trust & Investment Corp** [2005] 2 HKC 589 (stay of Hong Kong proceedings against Chinese state-owned enterprise in mainland insolvency). Cases of judicial assistance in the traditional sense include **Re Impex Services Worldwide Ltd** [2004] BPIR 564, where a Manx order for examination and production of documents was made in aid of the provisional liquidation in England of an English company.'

> "In the Board's opinion, the principle of modified universalism is part of the common law, but it is necessary to bear in mind, first, that it is subject to local law and local public policy and, secondly, that the court can only ever act within the limits of its own statutory and common law powers. What are those limits? In the absence of a relevant statutory power, they must depend on the common law, including any proper development of the common law. The question how far it is appropriate to develop the common law so as to recognise an equivalent power does not admit of a single, universal answer. It depends on the nature of the power that the court is being asked to exercise. On this appeal, the Board proposes to confine itself to the particular form of assistance which is sought in this case, namely an order for the production of information by an entity within the personal jurisdiction of the Bermuda court. The fate of that application depends on whether, there being no statutory power to order production, there is an inherent power at common law to do so."

[146] Likewise, in **Singularis Holdings Ltd v PricewaterhouseCoopers** [2014] UKPC 36, the Privy Council confirmed that the principle of modified universalism does not override domestic substantive law.

[147] The modified universalism principle is plainly of substantial importance to insolvency proceedings in the UK and the BVI. While that principle encourages cooperation between courts in cross-border insolvency matters, the Supreme Court in **Rubin** and the Privy Council in **Singularis** made it clear that it cannot override established rules governing jurisdiction.

[148] It follows that, in this context, the most that can be said about Part XIX is that it permits assistance. It does not alter the limits of the Court's subject-matter jurisdiction. It does not expressly authorise this Court to determine title to, or beneficial ownership of, land situated in England. It must, therefore, be construed consistently with the immovables rule.

[149] The Claimant's attempt to distinguish **Kireeva** on the basis that it concerned common law recognition rather than statutory assistance does not persuade me. The significance of **Kireeva** lies not only in its specific holding on common law recognition, but also in its reasoning regarding the substantive effect of the immovables rule. If foreign insolvency law cannot, at common law, affect rights in English land, and if the courts cannot take steps to deprive a person of such interests in favour of a foreign trustee absent statutory intervention, then clear statutory words would be needed to alter that position. **Part XIX** contains no such clear words.

[150] As His Honour Judge Mark Pelling KC, sitting as a Judge of the High Court, observed in **Beograd Innovation Ltd v Somovidis** [2024] EWHC 1182 (Ch): [8]

> "32 … as a matter of English law, the immovable assets of the defendant located in England are not amenable to collection by the Russian insolvency office holder because English law does not recognise such property as being within the scope of the defendant's bankruptcy in Russia, and because there is no question of the claimant bringing a claim here that could have been proved for or otherwise made in the Russian insolvency proceedings since the only court with jurisdiction to enforce the claimant's judgment against immovable assets in England and Wales are the courts of England and Wales, at the suit of the claimant."

[151] Accordingly, the Claimant cannot rely on **Part XIX** as a basis for inviting this Court to adjudicate upon the beneficial ownership of the London Property.

[152] It follows that the statutory assistance regime does not assist the Claimant on the issue presently before the Court.

Recognition and enforcement at the situs

[153] The Defendants also submit that any BVI judgment purporting to determine rights or interests in the London Property would not be recognised or enforced in England.

[8] [2024] EWHC 1182 (Ch), at [32].

[154] The Claimant responds that recognition is a matter for the English courts. In theory, at any rate, that is correct. But the likely position at the situs remains highly relevant.

[155] The English courts have repeatedly affirmed that foreign courts have no jurisdiction to determine rights in English immovable property. The authorities include **Pescatore v Valentino** [2021] EWHC 1953 (Ch), **Nambiar v Karam** [2023] EWHC 839 (Ch), and **Pattni v Ali** [2006] UKPC 51, which confirm that English law treats the actual transfer or disposition of property as, in principle, a matter for the courts and legislature of the jurisdiction where the property is situated.

[156] The recognition issue, therefore, reinforces the Defendants' case. It is one thing for a court to proceed in a case where effective and coherent relief can be expected to follow. It is quite another for a court to adjudicate upon rights in foreign land in circumstances where the courts of the situs are unlikely to recognise the result. That consideration, while not the primary basis for my conclusion, strongly supports it.

<u>Recent authority following Kireeva</u>

[157] **Kireeva** has been followed in subsequent cases, including **Almeqham v Al-Sanae & Ors** [2025] EWHC 322 (Ch), **Sidoli v Sidoli** [2025] EWHC 1425 (Ch), **Transworld Payment Solutions UK Ltd v First Curacao International Bank NV** [2025] EWHC 2480 (Ch), and **Beograd Innovation Ltd v Somovidis** [2024] EWHC 1182 (Ch).

[158] I attach particular weight to **Almeqham** and **Beograd Innovation**. They illustrate the practical application of **Kireeva** in the insolvency context. They confirm that English immovable assets are not amenable to collection by a foreign insolvency office-holder by reason only of foreign insolvency law and that the only courts with jurisdiction to adjudicate upon such rights are the courts of England and Wales.

[159] Those authorities, therefore, provide further support for the Defendants' position that the Claimant cannot use this Court as a vehicle to obtain declarations or coercive relief in relation to the London Property.

The true conclusion on the Claimant's arguments

[160] The Claimant's submissions, stripped to their essentials, boil down to four propositions: first, that the case is really about the Shares; second, that the London Property issue is incidental; third, that the equitable *in personam* exception applies; and fourth, that **Part XIX** provides the necessary statutory route.

[161] I reject each of those propositions.

[162] The case is not, in substance, simply about the Shares. The Shares matter because they are said to be the mechanism through which the Debtor's beneficial interest in the London Property was held and concealed. The substantive relief sought by the Claimant includes relief in relation to the London Property itself.

[163] The London Property issue is not incidental. It is central. The Court lacks jurisdiction to determine the Claim without deciding whether the Debtor had a beneficial interest in the London Property.

[164] The equitable *in personam* exception does not apply because the Claimant does not seek to enforce an existing personal obligation recognised by the law of the forum; he seeks first to establish a beneficial interest in English land.

[165] **Part XIX** does not alter the position because it does not abrogate the immovables rule or confer jurisdiction on this Court to determine legal or equitable interests in land situated in England.

[166] Convenience, efficiency, and the desirability of determining connected issues together do not alter those conclusions.

Conclusion on Jurisdiction

[167] The essential difficulty with the Claimant's case is that the relief sought requires the Court to determine whether the Debtor possessed a beneficial interest in the London Property, which is immovable property situated in England. That issue lies at the centre of the Claim.

[168] Under well-established principles of private international law, questions concerning proprietary rights in land fall within the exclusive jurisdiction of the courts of the place where the land is situated.

[169] The courts of England and Wales, therefore, enjoy exclusive jurisdiction to determine whether the Debtor held any beneficial interest in the London Property. It follows ineluctably that this Court cannot adjudicate the Claim as presently formulated.

[170] When analysed against the applicable legal framework, the Claim necessarily requires this Court to determine the Debtor's beneficial interest in the London Property – a question lying at its heart. Such determination constitutes an adjudication of proprietary rights in English land, falling squarely within the immovables rule and thus within the exclusive remit of the courts of the situs.

[171] English courts (and by way of analogy, BVI courts) steadfastly refuse to permit foreign judgments to impinge upon title to or disposition of immovable property situated in England: **Pescatore v Valentino** [2021] EWHC 1953 (Ch). This doctrine admits no exception for insolvency proceedings. The UK Supreme Court confirmed in **Kireeva** that foreign law and orders cannot affect English immovables. Neither **Rubin v Eurofinance** (precluding recognition of foreign insolvency judgments absent standard grounds) nor the modified universalism principle (mandating cooperation only to the extent consonant with justice and UK public policy) countenances any departure from these foundational principles.

[172] Recent authority confirms the outright refusal of recognition for foreign judgments concerning English-sited immovable property: **Nambiar v Karam** [2023] EWHC 839 (Ch). The rule operates irrespective of whether a BVI judgment is deemed *in rem* or *in personam*.

The Privy Council in **Pattni v Ali** [2006] UKPC 51 held that property disposition falls exclusively within the situs court's purview, stating, at [24], per Lord Mance, delivering the judgment of the Board of the Privy Council, that:

> "The actual transfer or disposition of property is, in principle, a matter for the legislature and courts of the jurisdiction where the property is situate (state A), and will be recognised accordingly by courts in any other state (state B) … This was described by Blackburn J in **Castrique v Imrie** LR 4 HL 414, 429 as a "more general principle" of which the rule relating to judgments in rem might "very well be said to be a branch". It does not depend upon the transfer or disposition in and under the law of state A being intended or purporting to bind the whole world. It is enough that it was intended to bind a person in the position of the person who in state B seeks to challenge the transfer or disposition in state A. This principle was applied in **Cammell v Sewell** 5 H & N 728 and more recently by Gross J in **Air Foyle Ltd v Center Capital Ltd** [2003] 2 Lloyd's Rep 753, 764. It follows from it, conversely, that in the unlikely event that the courts of state A were to purport actually to transfer or dispose of property in state B, the purported transfer or disposal should not be recognised as effective in courts outside state A."

[173] Foreign judgments purporting to transfer or impact such property elsewhere warrant no recognition. In **Nambiar**, the English Court accordingly declined to recognise a Florida judgment imposing orders over a London flat. Although questioning its *in rem* nature, the court ruled that it breached the immovables rule, barring recognition or enforcement.

[174] When the Claimant's case is examined in that light, the essential character of the dispute becomes clear. The Claimant seeks declarations that the Debtor was the beneficial owner of the shares in K Legacy Ltd and that those shares are held on trust for the Debtor's estate. However, the alleged beneficial ownership of those shares is said to arise because the Debtor was the beneficial owner of the London Property held by the First Defendant. The existence of the alleged trust of the shares, therefore, depends upon the proposition that the Debtor possessed a beneficial interest in that property.

[175] Determining whether such a trust exists would necessarily require the Court to determine whether the Debtor held an equitable proprietary interest in the London property. That question lies at the heart of the Claim. Although the property is legally owned by a company incorporated in the British Virgin Islands, the Court would nonetheless be

required to decide whether the Debtor possessed a beneficial interest in land situated in England.

[176] In those circumstances, the corporate structure through which the property is held cannot alter the essential nature of the dispute. The fact that the property is owned by a BVI company does not change the question which the Court is asked to determine. The Court would still be required to decide whether the Debtor held a beneficial interest in English land. If the claim were to succeed, the declarations sought would in substance determine proprietary rights in that land.

[177] I, therefore, accept the substance of the Defendants' jurisdictional argument. The present claim, properly analysed, requires this Court to determine whether the Debtor held a beneficial interest in immovable property located in England. The immovables rule, therefore, applies.

[178] It follows that this Court cannot determine the question whether the Debtor held a beneficial interest in the London Property. That issue must be determined, if at all, by the courts of England and Wales.

[179] Accordingly, the jurisdictional objection raised by the Defendants is well-founded.

Consequences for the Claim

[180] The conclusion that the immovables rule applies has significant consequences for the present proceedings. The Claimant's case, as presently formulated, depends upon establishing that the Debtor held a beneficial interest in the London Property owned by K Legacy. Without determining that issue, it would not be possible to determine whether the Shares in the company were held on trust for the Debtor's estate.

[181] In circumstances where the determination of that issue falls within the exclusive jurisdiction of the courts of England, this Court cannot adjudicate upon the central question on which the Claim depends. The effect of the immovables rule is, therefore, that the Court lacks

jurisdiction to determine the Claim insofar as it requires the Court to decide whether the Debtor possessed a beneficial interest in the London Property.

[182] The Defendants submit that the appropriate consequence is the dismissal or striking out of the claim. I agree.

[183] The Claimant seeks declarations that the Debtor was the beneficial owner of the Shares and that the Defendants hold those Shares on trust for the Debtor's estate. But, as already explained, the alleged trust of the Shares is said to arise from the Debtor's alleged beneficial ownership of the London Property. If this Court cannot determine that question, the foundation of the Claimant's case, in relation to any matter, on the facts of this case, cannot be established within this jurisdiction.

[184] In those circumstances, the Claim, in its present form, cannot proceed. The Court cannot grant the relief sought without first determining a question which lies outside its jurisdiction by reason of the immovables rule.

[185] It follows that the Claim should be dismissed.

[186] In principle, it would be open to the Claimant to pursue any claim relating to proprietary rights in the London Property before the courts of England and Wales, which are the courts of the situs of the Property and, therefore, the courts with jurisdiction to determine such questions. Whether or not the Claimant has standing to do so is not a matter for determination by me. The present proceedings, however, cannot be used as a vehicle for determining those issues indirectly through a dispute concerning the ownership of the Shares.

<u>If there were a discretion</u>

[187] For the avoidance of doubt, I would reach the same practical result even if, contrary to my primary conclusion, this Court possessed some discretion to entertain the Claim.

[188] I would decline to exercise any such discretion for four principal reasons.

[189] First, there is a substantial likelihood that any judgment of this Court purporting to determine rights or interests in the London Property would not be recognised or enforced in England.

[190] Second, it would be disproportionate and inefficient to devote the time and cost of a trial to issues incapable of yielding practically effective relief.

[191] Third, it would be wrong in principle for this Court to grant orders in relation to foreign immovable property which are liable to conflict with the jurisdiction and judgments of the courts of the situs.

[192] Fourth, the risk of duplication and inconsistent outcomes is not reduced by proceeding here; it is increased if this Court were to make orders which the English courts would not recognise.

[193] Accordingly, even if I were wrong about the absence of jurisdiction, I would decline to exercise any putative jurisdiction in the Claimant's favour.

[194] The practical consequences of accepting the Claimant's argument also merit consideration. If the immovables rule could be avoided merely by interposing a corporate vehicle between the claimant and the land, the rule would be readily circumvented. A dispute over land could be transformed into a dispute over shares by placing the land in a company incorporated in another jurisdiction. Such an approach would undermine the purpose of the rule and erode the principle that rights in land are governed by the law of the place where the land is situated.

[195] In those circumstances, the appropriate course is to grant the Defendants' jurisdictional application. Given that conclusion, it is unnecessary to determine in detail the remaining aspects of the Defendants' strike-out application. Those arguments were directed primarily to the merits of the Claimant's pleaded case and to the sufficiency of the evidence relied upon. In light of the Court's conclusion that the claim cannot proceed for want of jurisdiction, it is unnecessary to address those issues.

[196] Similarly, the Defendants' objections to aspects of the Claimant's written evidence do not require determination. Those objections arise in the context of a claim which, for the reasons already given, cannot proceed in this jurisdiction.

Consequential orders and remaining issues

[197] I reject the Claimant's submission that there remains some separate interest in the Shares, untouched by the immovables rule, in relation to which this Court still has a function to perform. It has no such function. The suggestion that the Shares can somehow be considered separately from the London Property is misconceived. There is no suggestion that the Shares have any value without the corresponding London Property, and the continuation of injunctions here in relation to them would be untenable. If injunctive relief is sought in relation to the London Property or interests inseparable from it, it must be sought in England.

[198] It follows from these conclusions that the Claim cannot proceed in this jurisdiction.

[199] The appropriate orders are, therefore, as follows.

[200] The Claim stands dismissed.

[201] The trial fixed for October 2026 is vacated.

[202] The 24 March 2026 hearing is vacated insofar as it concerned the outstanding elements of the 19 January 2026 Application (viz., the Statement of Claim Application and Witness Statement Application). That date shall instead be used to hand down this judgment formally and address costs and consequential matters.

[203] The injunctions granted on 1 October 2024 and continued on 31 October 2024 are discharged.

[204] The remaining applications (Statement of Claim, Witness Statement, and Specific Disclosure) are dismissed as moot, save as to costs on which I shall hear the parties.

[205] I should make clear that, although this Judgment does not address every point raised in the hearing of paragraph 1 of the 19 January 2026 Application, I am satisfied that it addresses all substantive issues necessary for the determination of that part of the Application.

[206] I will hear counsel on costs and further consequential matters.

Acknowledgments

[207] As ever, I am grateful to counsel for the clarity of their written and oral submissions and for their assistance throughout the hearing of this Application.

Abbas Mithani KC

High Court Judge (Ag)

By the Court

Registrar